## UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA ALEXANDRIA DIVISION

FRANCONIA SQUARE, LLC

:

Plaintiff,

v.

Case No. 1:12cv1007

CMH/JFA

NOVA PETROLEUM REALTY, LLC

:

Defendant.

\*\*\*\*\*\*\*\*\*\*\*\*\*

## MOTION TO ALLOW REBUTTAL BRIEF TO BE FILED BEYOND THREE DAY PERIOD

COMES NOW Plaintiff, by Counsel and requests the Court to allow the filing of a Rebuttal Brief beyond the three day period set forth in Local Civil Rule 7(F)(1). In support thereof the following is stated.

- 1. Defendant's Reply brief to the Motion for Preliminary Injunction was filed on October 1, 2012.
- 2. The hearing on the Motion for Preliminary Injunction has been set for October 26, 2012.
- 3. The Reply brief raises the defense by Defendant that Plaintiff is in violation of Fairfax County zoning ordinance.
- 4. Counsel for Plaintiff required time to examine this issue and to present to the court a clear position that it was never a violation by Plaintiff of the zoning ordinance, but such violation was that of the land owner (Defendant).

- 5. Counsel for Plaintiff was out of town for the most part since the filing of the Reply Brief and unable to prepare the Rebuttal Brief during the three day period.
- 6. There is no prejudice to Defendant since there is sufficient time prior to the hearing for Defendant to consider the matters contained in the Rebuttal Brief, which will be filed as soon as permission is granted by the Court.

WHEREFORE, Plaintiff pursuant to Local Rule 7 (F)(1) requests leave to file a Rebuttal Brief no later than October 17, 2012.

Respectfully submitted,

Franconia Square, LLC, by Counsel

/s/

Douglas E. Bywater (VSB#9137)
Tate, Bywater & Fuller, PLC
2740 Chain Bridge Road
Vienna, VA 22181
703 938-5100 Tel.
703 255-1097 Fax
debywater@tatebywater.com

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 16th day of October, 2012, I electronically filed the foregoing with the Clerk of the Court and sent via first class U.S. Mail, postage prepaid to:

John M. Luchak Bassman, Mitchell & Alfano, Chartered 1707 L Street, N.W., Suite 560 Washington, DC 20036

> \_\_\_\_\_\_/s/ Douglas E. Bywater